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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 127 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHAGIRATH D THAKKAR

Appearance:

Mr.K.P.Raval, learned Addl. P.P. for the appellant

MR BG JANI for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 20/09/2001

ORAL JUDGEMENT

1. The appellant State of Gujarat has challenged the order of acquittal recorded by the learned Judicial

Magistrate, First Class, Patan dated 24.10.90 passed in Criminal Case No.3591/86 acquitting respondent - accused from the offence under Section 7 (1) read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act.

2. Mr. K.P.Raval, learned Addl. P.P. appearing for the appellant - State has while arguing the matter taken me through the evidence,oral as well as documentary, and the Judgment under challenge. It is the prosecution case that the complainant P.W.1 Pravinkumar Dinmanishankar Vyas was working as Food Inspector with the Patan Nagarpalika and he has visited the shop of the respondent accused known as New Bhagwati Kirana Store on 8.5.86. It is not in dispute that the complainant is a Gazetted Officer and is empowered to take sample for analysis. It is the case of the complainant that when he visited the shop of respondent accused on 8.5.86 at 11.30 A.M. alongwith his peon turmeric powder was found adulterated and accordingly after following due procedure, as contemplated under the Prevention of Food Adulteration Act, he has taken the sample of the turmeric powder by paying the respondent accused a sum of Rs.24.30 Ps. 450 Gr. turmeric powder purchased by him was divided into three parts and he has kept the said turmeric powder in a clean polyethylene bag and he has also tied the thread and put seal on the top. He has also forwarded the said turmeric powder for analysis and gave notice to the concerned person. The report of the Public Analyst showed that the said turmeric powder was not found within the requisite standard as contemplated under the Act. He had also issued necessary notices under Section 13(2) of the Act. After obtaining sanction, the complaint was filed against the respondent - accused in the trial court. As found from the evidence of the complainant, whose evidence was recorded at Exh.20 P.W.1, in the evidence in chief he deposed in the manner in which he had purchased the powder from the respondent accused's shop on 8.5.86. It is also the case of the complainant that he had visited the shop alongwith his Peon and 450 gr. turmeric powder was taken and kept in 3 polyethylene bags provided by the Corporation and after taking said turmeric powder, he has applied the requisite seal and sent the same for analysis and as per the report of public analysis, the said turmeric powder was found adulterated. Exh.30 is the report of the Public Analyst dated 3.6.86 and as per the said opinion, it is opined that the sample of Haldi powder does not confirm to the standard and provisions laid down under the Food Adulteration Rules, 1955. Report Exh.30 reads as under:-

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Sr.No.
Sr.No. Characteristic examined Result of P.F.A.
analysis Limits.

E.No. Description:Dark Yellow fine to coarse powder
1484
1. Moisture % 8.64% Max.13.0%
2. Total ash% 7.16% Max.9.0%
3. Ash insoluble in
di.Hel. 2.76% Max 1.5%
4. Total Starch % 40.19% Max.60%
5. Test for Lead
earomate. Negative Negative
6. Artificial colouring
matter. Yellow coloured
Oil soluble coal
absent - tar colour
detected.
7. Microscopic
Examination: The sample is Turmeric powder
mixed with Rice Starch
and Rice busk.
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and am of the opinion that the sample No. of Haldi powder does not confirm to the standards and provisions laid down under Prevention of Food Adulteration Rules, 1955."

3. It is not in dispute that as per the report of the complainant, the turmeric powder was not in accordance with the standards laid down under the Rules. It is also not in dispute that the complainant had after obtaining necessary sanction from the authority filed complaint. In the cross examination the complainant had admitted certain facts, which are fatal to the prosecution. It is admitted by the complainant that he has obtained the sample of turmeric powder from the respondent with Spoon provided by the accused and even used the scale, which was kept by the accused in his shop and first he has obtained sample of turmeric powder in the paper which was provided by the accused. It is further admitted by the complainant that the accused was also providing and supplying commodities to all the customers from the same spoon, which he used while taking the sample and the accused also used to give commodity to the customers who come to purchase rice and other items. Rule 14 reads as under:-

"Sealing, Fastening and Despatch of Samples.

14. Manner of sending samples for

analysis.Samples of food for the purpose of analysis shall be taken in clean dry-bottles or jars or in other suitable containers, which shall be closed sufficiently tight to prvent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed."

4. The learned Magistrate discussed the evidence at length and he has recorded finding that while taking the sample of turmeric powder from the respondent accused, the complainant has not followed Rule 14 and relying upon certain decisions on the point, held that the prosecution has failed to prove the case and accordingly acquitted the accused. Mr. Raval, learned Addl. P.P. appearing for the State, has vehemently urged that looking to the fact, which is highlighted from the evidence of P.W.1, who in term deposed that the sample was taken by him after following the due procedure and as per the provisions prescribed under the Rules and under the Food Adulteration Act, the learned Magistrate was not right in acquitting the accused by saying that there is breach of Rule 14. On considering the submissions and on going through the evidence of the complainant, wherein the complainant has in term admitted the fact of taking sample from respondent accused i.e. to say that the sample was taken by him from the spoon provided by the accused and further looking to the admission made by the complainant that the accused has used to give other commodity to customers by using the same spoon, in my view, no interference is warranted by this Court with the order passed by the learned Magistrate. Accordingly there is no substance in this Appeal. The Appeal is dismissed. The order passed by the learned Magistrate is hereby confirmed.

(D.K.Trivedi,J)